

1
2 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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STEVEN A. CUCULICH, as trustee in Inter

4 Vivos TRII FBO The Cuculich Family,

5 Plaintiff,

6 -against-

7 JOHN Z. RIGOS,

8 Defendant.

9
Index No.: 1:21-cv-6753-SLC

10 - - - - -x

11
July 13, 2022

12 11:02 a.m.

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14
15 REMOTE EXAMINATION BEFORE TRIAL
16 of JOHN Z. RIGOS, the Defendant in the
17 above-entitled action, held at the above
18 time and date, taken before Maryann Laub, a
19 Notary Public of the State of New York,
20 pursuant to Agreement and stipulations
21 between Counsel.

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<p style="text-align: right;">Page 2</p> <p>1</p> <p>2 APPEARANCES:</p> <p>3</p> <p>4 (ALL PARTIES ATTENDING REMOTELY)</p> <p>5</p> <p>6 MOREA, SCHWARTZ, BRADHAM,</p> <p>7 FRIEDMAN & BROWN, L.L.P.</p> <p>8 Attorneys for Plaintiff</p> <p>9 444 Madison Avenue, 4th Floor</p> <p>10 New York, New York 10022</p> <p>11 BY: JOHN BRADHAM, ESQ.</p> <p>12</p> <p>13 MORICI & MORICI, L.L.P.</p> <p>14 Attorneys for Defendant</p> <p>15 60 E. 42nd Street, Suite 2450</p> <p>16 New York, New York 10165</p> <p>17 BY: GERARD MORICI, ESQ.</p> <p>18</p> <p>19 * * *</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1</p> <p>2 J O H N Z. R I G O S, the witness</p> <p>3 herein, having first been duly sworn</p> <p>4 remotely by the Notary Public, was</p> <p>5 examined and testified as follows:</p> <p>6 EXAMINATION BY</p> <p>7 MR. BRADHAM:</p> <p>8 Q. State your name for the record,</p> <p>9 please.</p> <p>10 A. John Z. Rigos.</p> <p>11 Q. Where do you presently reside?</p> <p>12 A. 45 East 85th Street, Apartment</p> <p>13 9D, New York, New York 10028.</p> <p>14 THE REPORTER: Counsel, are you</p> <p>15 ordering a copy?</p> <p>16 MR. MORICI: Yes.</p> <p>17 MR. BRADHAM: Mr. Rigos, I will</p> <p>18 be taking your deposition today. I'm</p> <p>19 John Bradham. I represent the</p> <p>20 plaintiff in this matter.</p> <p>21 I'll be asking various</p> <p>22 questions. I would ask you to try to</p> <p>23 speak as clearly as you can. We are</p> <p>24 doing this remotely by Zoom today,</p> <p>25 which can pose some challenges. But if</p>
<p style="text-align: right;">Page 3</p> <p>1</p> <p>2 STIPULATIONS</p> <p>3 IT IS HEREBY STIPULATED AND AGREED, by</p> <p>4 and among counsel for the respective</p> <p>5 parties hereto, that the filing, sealing</p> <p>6 and certification of the within deposition</p> <p>7 shall be and the same are hereby waived;</p> <p>8 IT IS FURTHER STIPULATED AND AGREED that</p> <p>9 all objections, except as to form of the</p> <p>10 question, shall be reserved to the time of</p> <p>11 the trial;</p> <p>12 IT IS FURTHER STIPULATED AND AGREED that</p> <p>13 the within deposition may be signed before</p> <p>14 any Notary Public with the same force and</p> <p>15 effect as if signed and sworn to before the</p> <p>16 Court.</p> <p>17 * * *</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 J. Z. Rigos</p> <p>2 we all speak clearly, then I think</p> <p>3 things will go a lot quicker.</p> <p>4 Q. Have you ever had your</p> <p>5 deposition taken before?</p> <p>6 A. Once years ago.</p> <p>7 Q. Do you remember the case it was</p> <p>8 taken in?</p> <p>9 A. Yeah. I am in the restaurant</p> <p>10 business. It had to do with somebody</p> <p>11 slipping on stairs in one of our</p> <p>12 restaurants. This is like ten years ago</p> <p>13 I'm guessing.</p> <p>14 Q. Do you by chance remember the</p> <p>15 name of the case?</p> <p>16 A. I don't.</p> <p>17 Q. Were you a party in the case?</p> <p>18 A. I don't recall. I am a part of</p> <p>19 the management team that owns a portfolio</p> <p>20 restaurant, so I wasn't involved with the</p> <p>21 operations at that restaurant. But because</p> <p>22 I'm part of the management team that</p> <p>23 oversees the portfolio of restaurants, I</p> <p>24 guess I was asked to be deposed.</p> <p>25 Q. Do you recall the name of the</p>

<p style="text-align: right;">Page 6</p> <p>1 J. Z. Rigos</p> <p>2 restaurant at issue?</p> <p>3 A. Yes. It was one of the Five</p> <p>4 Guys restaurants we own in New York City,</p> <p>5 in Manhattan.</p> <p>6 Q. Have you ever testified in court</p> <p>7 before?</p> <p>8 A. No.</p> <p>9 Q. Have you discussed the substance</p> <p>10 of your deposition testimony today with</p> <p>11 anyone, other than your attorney?</p> <p>12 A. No.</p> <p>13 Q. You just mentioned you're in the</p> <p>14 restaurant business.</p> <p>15 Can you just tell me about your</p> <p>16 occupation, what you do and how long you've</p> <p>17 done it for?</p> <p>18 A. Sure. So I'm part of a company</p> <p>19 that owns a portfolio of different</p> <p>20 restaurant brands, and each brand has</p> <p>21 multiple locations. And I oversee, you</p> <p>22 know, the performance of the restaurants.</p> <p>23 And I work with the brand leaders to ensure</p> <p>24 they are operating their restaurants well.</p> <p>25 And that's really it.</p>	<p style="text-align: right;">Page 8</p> <p>1 J. Z. Rigos</p> <p>2 environs.</p> <p>3 Q. How long have you been in the</p> <p>4 restaurant business?</p> <p>5 A. About 18 years.</p> <p>6 Q. Have you ever actually worked in</p> <p>7 a restaurant yourself?</p> <p>8 A. No.</p> <p>9 Q. But it would be fair to say you</p> <p>10 are very knowledgeable about the restaurant</p> <p>11 business?</p> <p>12 A. Yes.</p> <p>13 Q. In particular in New York?</p> <p>14 A. Yes.</p> <p>15 Q. Are you familiar with the type</p> <p>16 of Government permits that are required to</p> <p>17 operate a business in New York?</p> <p>18 A. I wouldn't say I am an expert at</p> <p>19 it. I have familiarity with it. We have</p> <p>20 people that worry about permitting and</p> <p>21 compliance and things like that.</p> <p>22 So my expertise is more on the</p> <p>23 business strategy side of the equation, not</p> <p>24 necessarily the mechanics of day-to-day</p> <p>25 operations.</p>
<p style="text-align: right;">Page 7</p> <p>1 J. Z. Rigos</p> <p>2 Q. What's the name of this company</p> <p>3 that you are part of the management team</p> <p>4 of?</p> <p>5 A. Sure. The name of the company</p> <p>6 is Aurify Brands, that's spelled</p> <p>7 A-U-R-I-F-Y.</p> <p>8 Q. Are you the part owner in that</p> <p>9 business?</p> <p>10 A. I am.</p> <p>11 Q. There are other part owners?</p> <p>12 A. Yes.</p> <p>13 Q. Is Rocco DiSpirito a part owner?</p> <p>14 A. No.</p> <p>15 Q. What type of restaurants does it</p> <p>16 own?</p> <p>17 A. So we own primarily what's</p> <p>18 called fast casual restaurants. Like Five</p> <p>19 Guys is a fast casual restaurant that we</p> <p>20 view other brands in that category.</p> <p>21 Q. Are these restaurants all in New</p> <p>22 York or are they spread out in other areas?</p> <p>23 A. Primarily New York City,</p> <p>24 Manhattan and Brooklyn. Then we have a few</p> <p>25 locations in Washington D.C. and the</p>	<p style="text-align: right;">Page 9</p> <p>1 J. Z. Rigos</p> <p>2 Q. These restaurants your company</p> <p>3 owns, you mentioned Five Guys, are there</p> <p>4 other brands as well?</p> <p>5 A. There are other brands. Yes.</p> <p>6 Q. What are those?</p> <p>7 A. They range from Le Pain</p> <p>8 Quotidien, which means the daily bread.</p> <p>9 Other brands are Melt Shop and Little Beet.</p> <p>10 Q. Le Pain Quotidien, did your</p> <p>11 company acquire that after the Belgian, I</p> <p>12 believe, company went bankrupt?</p> <p>13 A. Correct. We bought it last</p> <p>14 summer during the throws of the pandemic</p> <p>15 via a bankruptcy process.</p> <p>16 Q. I'm a big fan.</p> <p>17 A. Fantastic.</p> <p>18 Q. I was one of your better</p> <p>19 customers.</p> <p>20 I take it you know Rocco</p> <p>21 DiSpirito?</p> <p>22 A. Yes.</p> <p>23 Q. How did you come to know him?</p> <p>24 A. So a mutual friend introduced</p> <p>25 us. I'm guessing it's around ten years</p>

<p style="text-align: right;">Page 10</p> <p>1 J. Z. Rigos</p> <p>2 ago, eight to ten years ago. Rocco was in</p> <p>3 the process of building a diet weight loss</p> <p>4 management business where, if you were a</p> <p>5 client, he would provide you with all the</p> <p>6 meals you would need each day for, say, a</p> <p>7 month. And that meal program was very low</p> <p>8 calorie. And you would lose weight</p> <p>9 sticking to his diet plan. That was the</p> <p>10 business he was pursuing.</p> <p>11 Q. Is that the business he was</p> <p>12 operating at the premises that are at issue</p> <p>13 in this lawsuit?</p> <p>14 A. I believe that is the business</p> <p>15 he was building there. And he was making</p> <p>16 shakes and other food stuff that he would</p> <p>17 package and deliver. Yes.</p> <p>18 Q. So he would prepare these diet</p> <p>19 weight loss foods at the premises and then</p> <p>20 deliver them to customers?</p> <p>21 A. Correct.</p> <p>22 Q. You are in this case because you</p> <p>23 are the guarantor of his lease.</p> <p>24 Have you done other business</p> <p>25 with Mr. DiSpirito other than that?</p>	<p style="text-align: right;">Page 12</p> <p>1 J. Z. Rigos</p> <p>2 to be involved with this.</p> <p>3 And this has been going on for</p> <p>4 some time, and I don't know that any</p> <p>5 progress has been made.</p> <p>6 Q. I didn't hear the last thing you</p> <p>7 said.</p> <p>8 A. I don't know that any progress</p> <p>9 has been made. He keeps assuring me he is</p> <p>10 doing everything possible to remove me from</p> <p>11 this lawsuit, but I don't really know</p> <p>12 what's going on.</p> <p>13 Q. Have these been phone</p> <p>14 conversations you have had with him or</p> <p>15 E-mails? How have you had these</p> <p>16 communications?</p> <p>17 A. Primarily having a periodic call</p> <p>18 when I get a notice from somebody that</p> <p>19 something is happening. And I will call</p> <p>20 and say what's going on.</p> <p>21 Q. Have you had any E-mail</p> <p>22 communications with him about this case?</p> <p>23 A. I don't think very much. And if</p> <p>24 I have, I would have provided it to my</p> <p>25 counsel. Because they asked me to provide</p>
<p style="text-align: right;">Page 11</p> <p>1 J. Z. Rigos</p> <p>2 A. I wouldn't even say I did</p> <p>3 business with him on that. No. I have not</p> <p>4 done anything with Rocco. And why I'm here</p> <p>5 is very strange.</p> <p>6 I guess I will wait for you to</p> <p>7 ask any questions you want to ask to</p> <p>8 extract that information.</p> <p>9 Q. I'm sure we will get to the</p> <p>10 strangeness of it.</p> <p>11 A. Yes.</p> <p>12 Q. Have you discussed this case</p> <p>13 that you are a defendant in with</p> <p>14 Mr. DiSpirito?</p> <p>15 A. Only in the context of I can't</p> <p>16 believe I'm dealing with this.</p> <p>17 Q. Would it be fair to say you have</p> <p>18 expressed your displeasure to him that</p> <p>19 you're a defendant in this lawsuit and</p> <p>20 involved in this?</p> <p>21 A. Absolutely.</p> <p>22 Q. Has he responded to that with</p> <p>23 anything?</p> <p>24 A. He responds basically saying,</p> <p>25 I'm doing everything I can to get you not</p>	<p style="text-align: right;">Page 13</p> <p>1 J. Z. Rigos</p> <p>2 anything in writing. But I don't recall</p> <p>3 off the top of my head now anything</p> <p>4 material or particular beyond the</p> <p>5 occasional expression of frustration.</p> <p>6 That's all that would be in the E-mail.</p> <p>7 Q. Do you text Mr. DiSpirito?</p> <p>8 A. Again, in the context of if I'm</p> <p>9 notified that I'm needed for something or</p> <p>10 something is happening, I may text and say,</p> <p>11 what's going on.</p> <p>12 Q. So you may have had texts with</p> <p>13 him about this case?</p> <p>14 A. Yeah. But I wouldn't spend much</p> <p>15 time typing via text. I would probably</p> <p>16 just get on a call to talk.</p> <p>17 Q. I don't mean to --</p> <p>18 A. No. Please.</p> <p>19 Q. I'm just trying to understand.</p> <p>20 Do you know as you sit here</p> <p>21 today whether you have had texts with him</p> <p>22 about this case?</p> <p>23 A. I'm sure I have texted saying, I</p> <p>24 can't believe I am still involved. I can't</p> <p>25 believe this is happening. Please resolve</p>

<p style="text-align: right;">Page 14</p> <p>1 J. Z. Rigos</p> <p>2 it.</p> <p>3 Q. Has he responded to those texts?</p> <p>4 A. I'm sure he has responded and</p> <p>5 said, I will do whatever I can. Something</p> <p>6 in that vein.</p> <p>7 Q. Do you think those responses</p> <p>8 were by text from him to you?</p> <p>9 A. Yeah. I am sure there are a</p> <p>10 couple of those kinds of texts.</p> <p>11 Q. In terms of E-mails you have had</p> <p>12 with him about this case, you believe any</p> <p>13 E-mail communications you have had with him</p> <p>14 you would have given to your counsel?</p> <p>15 A. Correct.</p> <p>16 Q. Other than your attorney, have</p> <p>17 you discussed this case with anyone, and</p> <p>18 other than Mr. DiSpirito?</p> <p>19 A. No. It's embarrassing.</p> <p>20 Q. Why is it embarrassing?</p> <p>21 A. So back to when all of this</p> <p>22 began. And again, I believe it was 2014</p> <p>23 when the lease was signed. I thought his</p> <p>24 business model was interesting, but I had</p> <p>25 no involvement.</p>	<p style="text-align: right;">Page 16</p> <p>1 J. Z. Rigos</p> <p>2 everybody knows, it will be really</p> <p>3 embarrassing for me to have my financials</p> <p>4 out there. So can you just do me this</p> <p>5 favor and sign the guarantee.</p> <p>6 I said, Rocco, could you assure</p> <p>7 me that you are financially creditworthy</p> <p>8 and there's no issue at all? If something</p> <p>9 were to happen, you have it covered that I</p> <p>10 never have to deal with this? He said,</p> <p>11 yes. I guarantee you. Of course. I said,</p> <p>12 okay. You are assuring me. I am taking</p> <p>13 you at your word for it.</p> <p>14 And that was it. Then I said I</p> <p>15 would sign the lease. Incredibly</p> <p>16 embarrassing. The stupidest thing I have</p> <p>17 ever done. Not the lease, I signed the</p> <p>18 guarantee.</p> <p>19 Q. Sitting here today, do you</p> <p>20 believe what he told you, as you just</p> <p>21 recited, it was truthful?</p> <p>22 A. So on a recent call when I was</p> <p>23 angry with him, like, I can't believe this</p> <p>24 is actually happening, I said, Rocco, I</p> <p>25 think you lied to me then when you said</p>
<p style="text-align: right;">Page 15</p> <p>1 J. Z. Rigos</p> <p>2 He said, hey, I found this</p> <p>3 location. It's great. I'm going to take</p> <p>4 this spot. I'm going to use it as my</p> <p>5 commissary kitchen to build my business.</p> <p>6 Good for you. But I have a favor to ask</p> <p>7 you.</p> <p>8 I want to be very specific. He</p> <p>9 was just barely a new friend, but I thought</p> <p>10 he was a nice guy. I liked that he was</p> <p>11 entrepreneurial, trying to build a</p> <p>12 business.</p> <p>13 He said, my issue is that I need</p> <p>14 to have someone sign a guarantee. Why</p> <p>15 can't you sign the guarantee, I asked? He</p> <p>16 said, well, the landlord wants me to</p> <p>17 disclose all of my financials.</p> <p>18 And this was probably the</p> <p>19 stupidest thing I have ever -- amongst the</p> <p>20 stupidest things in my life. Certainly the</p> <p>21 stupidest thing I have ever done in</p> <p>22 business.</p> <p>23 He said, I don't want to</p> <p>24 disclose my financials because, you know, I</p> <p>25 am a celebrity. If somehow it gets out and</p>	<p style="text-align: right;">Page 17</p> <p>1 J. Z. Rigos</p> <p>2 this was not an issue. He said, no, it</p> <p>3 wasn't an issue then, but the pandemic has</p> <p>4 destroyed me. And I'm sorry, but I'm not</p> <p>5 in the same creditworthiness position as I</p> <p>6 was then.</p> <p>7 Then I said, okay. This has</p> <p>8 nothing to do with me. You and I have not</p> <p>9 spoken or seen each other in years. You</p> <p>10 are not even a friend. That I am dealing</p> <p>11 with this is incredibly offensive to me.</p> <p>12 You must have friend and family that can</p> <p>13 deal with this on your behalf. He said, I</p> <p>14 am doing all I can.</p> <p>15 Q. Sitting here today -- so it</p> <p>16 would have been back in 2014 when he told</p> <p>17 you that he was a celebrity so he didn't</p> <p>18 want to release his finances, correct?</p> <p>19 A. Yes.</p> <p>20 Q. Do you believe that that was an</p> <p>21 accurate statement, that that's why he</p> <p>22 didn't want to release his finances?</p> <p>23 A. I believed that then, and it</p> <p>24 made sense then, because he was one of the</p> <p>25 most regarded celebrity chefs. He lived in</p>

5 (Pages 14 - 17)

<p style="text-align: right;">Page 18</p> <p>1 J. Z. Rigos</p> <p>2 Tribeca in a nice apartment. I haven't</p> <p>3 seen it. I am told. He had multiple books</p> <p>4 he sold. He was on speaking tours. He had</p> <p>5 a show on TV.</p> <p>6 Seemed to be a pretty successful</p> <p>7 guy that could he come up with -- at the</p> <p>8 time I believe it was 150 grand or whatever</p> <p>9 it was. If things went south, I assumed it</p> <p>10 wasn't an issue. So I believed him then.</p> <p>11 Do I believe today that all of</p> <p>12 that was as it appeared? I don't really</p> <p>13 know. I would be speculating. I just</p> <p>14 don't know.</p> <p>15 MR. BRADHAM: What I want to go</p> <p>16 ahead and make Exhibit 1 is the</p> <p>17 agreement of lease dated November 3,</p> <p>18 2014. That's Bates stamped Rigos</p> <p>19 000002 through 000032.</p> <p>20 (Whereupon, the lease was hereby</p> <p>21 marked as Plaintiff's Exhibit 1 for</p> <p>22 identification, as of this date, by the</p> <p>23 reporter.)</p> <p>24 Q. Do you have that with you?</p> <p>25 A. I'm not sure what you were just</p>	<p style="text-align: right;">Page 20</p> <p>1 J. Z. Rigos</p> <p>2 MR. MORICI: On the bottom</p> <p>3 right, do you see the Rigos 000</p> <p>4 numbers?</p> <p>5 THE WITNESS: Yes, I do.</p> <p>6 MR. MORICI: So, John, he does</p> <p>7 have the produced version. If you can</p> <p>8 give him the Bates number, that should</p> <p>9 help out.</p> <p>10 Q. Do you have the Bates stamped</p> <p>11 document in front of you?</p> <p>12 A. Yes.</p> <p>13 Q. It would be -- the last page</p> <p>14 would be Rigos 000032.</p> <p>15 A. 32. Okay. Hold on. The</p> <p>16 numbers that I was looking at are in the</p> <p>17 200s, so I'm scrolling back. 32 is what</p> <p>18 you are asking me to look at. Hold on.</p> <p>19 Q. Sounds like you have the</p> <p>20 document production. Just go sort of to</p> <p>21 the front of it.</p> <p>22 A. Yeah. Okay. There it is. 32.</p> <p>23 That's my signature. Yes.</p> <p>24 Q. So that's your signature.</p> <p>25 I believe what you said</p>
<p style="text-align: right;">Page 19</p> <p>1 J. Z. Rigos</p> <p>2 referring to.</p> <p>3 Are you referring to the lease</p> <p>4 itself that was attached to a letter?</p> <p>5 There was a letter dated July 12, 2021 from</p> <p>6 you, John, to me. That, yes, I have in</p> <p>7 front of me.</p> <p>8 Q. I was just -- your counsel</p> <p>9 produced it in his production, so it had</p> <p>10 Bates stamps on it. As long as you have a</p> <p>11 copy of it, that's all we need.</p> <p>12 A. Yes. I'm looking at the lease.</p> <p>13 Q. Are you generally familiar with</p> <p>14 this document?</p> <p>15 A. I'm generally familiar with</p> <p>16 leases. This I have not looked at. I</p> <p>17 didn't even look at it then, to be honest</p> <p>18 with you.</p> <p>19 Q. So let's go to the last page.</p> <p>20 You see your signature there</p> <p>21 under guarantor? That's your signature?</p> <p>22 A. Hold on. Let me get down to the</p> <p>23 last page. I see there's E-mails that are</p> <p>24 attached. It looks like the last few</p> <p>25 pages.</p>	<p style="text-align: right;">Page 21</p> <p>1 J. Z. Rigos</p> <p>2 previously was you didn't even review this</p> <p>3 at the time you had entered into it; is</p> <p>4 that accurate?</p> <p>5 A. I may have given it a cursory</p> <p>6 look, but I did not review the lease as if</p> <p>7 it were my lease that I was signing.</p> <p>8 Q. If you look at the same</p> <p>9 signature page there, the tenant is</p> <p>10 Flavorworks Truck LLC d/b/a of the</p> <p>11 Delicious Life by Rocco DiSpirito.</p> <p>12 That is the business you were</p> <p>13 previously referring to, his fitness</p> <p>14 business?</p> <p>15 A. I don't know what the name of</p> <p>16 the business was. But sure, it was Rocco's</p> <p>17 business. Rocco is the name of the</p> <p>18 business. Do you know what I mean?</p> <p>19 Q. So to your knowledge, the</p> <p>20 tenant, this business is owned by Rocco</p> <p>21 DiSpirito?</p> <p>22 A. Yes.</p> <p>23 Q. Are there any other owners, to</p> <p>24 your knowledge?</p> <p>25 A. I have no knowledge.</p>

<p style="text-align: right;">Page 22</p> <p>1 J. Z. Rigos</p> <p>2 Q. Again, I believe you talked a</p> <p>3 little earlier about what it does.</p> <p>4 Is it correct that you testified</p> <p>5 that he is operating a business on the</p> <p>6 premises whereby he prepares</p> <p>7 fitness-related foods and then delivers</p> <p>8 them to customers elsewhere? Is that</p> <p>9 correct?</p> <p>10 A. I have never visited the</p> <p>11 facility to tell you that's what happens</p> <p>12 there, but I believe he produces meals for</p> <p>13 weight loss that he would produce in that</p> <p>14 kitchen, then deliver to his clients, yes.</p> <p>15 Q. You have never visited the</p> <p>16 premises before?</p> <p>17 A. No.</p> <p>18 Q. You said that's what you</p> <p>19 believe. Why do you believe that? What's</p> <p>20 your basis for that?</p> <p>21 A. I have no reason to believe when</p> <p>22 he told me he found a commercial kitchen</p> <p>23 in -- I believe this is Astoria or Long</p> <p>24 Island City, where he was going to produce</p> <p>25 his meal kits, that he did that.</p>	<p style="text-align: right;">Page 24</p> <p>1 J. Z. Rigos</p> <p>2 (collectively "payment obligations") any</p> <p>3 prompt and proper performance by the tenant</p> <p>4 of all its obligations to the landlord</p> <p>5 pursuant to the lease, other than those</p> <p>6 relating to the payment of money</p> <p>7 (collectively "non-payment obligations" all</p> <p>8 such payment obligations and non-payment</p> <p>9 obligations being hereinafter collectively</p> <p>10 referred to as "the guaranteed</p> <p>11 obligations").</p> <p>12 My question to you is, do you</p> <p>13 believe that you have complied with that,</p> <p>14 those first two sentences that I read?</p> <p>15 A. No.</p> <p>16 Q. Why do you believe you have not</p> <p>17 complied with that?</p> <p>18 MR. MORICI: Objection to the</p> <p>19 extent that there are other caveats and</p> <p>20 a lot of other language here that</p> <p>21 conditions that language. But I will</p> <p>22 let him answer the question. Obviously</p> <p>23 there's other language just in that</p> <p>24 paragraph.</p> <p>25 MR. BRADHAM: There's a question</p>
<p style="text-align: right;">Page 23</p> <p>1 J. Z. Rigos</p> <p>2 Q. So when you became guarantor,</p> <p>3 this is what he told you he was going to be</p> <p>4 doing at the premises?</p> <p>5 A. Yes. Correct.</p> <p>6 Q. Let's go to the same document</p> <p>7 we're looking at. If you go to article 37,</p> <p>8 which is on page 25.</p> <p>9 A. Article 37 on page 25. Yes.</p> <p>10 Q. And that's Rigos number 26.</p> <p>11 A. Yes.</p> <p>12 Q. This is the guarantee which is</p> <p>13 what brings you into this lawsuit. I'm</p> <p>14 going to go ahead and read for the record</p> <p>15 the first couple -- I won't read the entire</p> <p>16 guarantee, but I'll read the first two</p> <p>17 sentences.</p> <p>18 Paragraph 37.1 says, guarantor</p> <p>19 hereby expressly, absolutely,</p> <p>20 unconditionally, and irrevocably guarantees</p> <p>21 without setoff or deduction, jointly and</p> <p>22 severally, the prompt payment (and lawful</p> <p>23 money of the United States) when due by the</p> <p>24 tenant of all moneys now or hereafter due</p> <p>25 the landlord pursuant to the lease</p>	<p style="text-align: right;">Page 25</p> <p>1 J. Z. Rigos</p> <p>2 pending. That's coaching the witness</p> <p>3 when there is a question pending.</p> <p>4 That's not appropriate. Let's try to</p> <p>5 avoid this needless acrimony with this</p> <p>6 kind of stuff or this deposition will</p> <p>7 take a lot longer than it need be.</p> <p>8 MR. MORICI: Read the whole</p> <p>9 paragraph then before you ask a</p> <p>10 specific question.</p> <p>11 MR. BRADHAM: Again, I'm taking</p> <p>12 this deposition. You will have ample</p> <p>13 opportunity when I have completed my</p> <p>14 questions to ask him any questions you</p> <p>15 would like to.</p> <p>16 In the interim, you don't have</p> <p>17 the right to object. You can object to</p> <p>18 my questions, but you don't have the</p> <p>19 right to ask your own questions and</p> <p>20 start instructing the witness while my</p> <p>21 questions are pending.</p> <p>22 If you persist doing so, I</p> <p>23 assure you, I will take this up with</p> <p>24 the court.</p> <p>25 Q. Mr. Rigos, I will ask you again.</p>

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<p style="text-align: right;">Page 26</p> <p>1 J. Z. Rigos</p> <p>2 You said you have not complied</p> <p>3 with the guarantee, the two sentences I</p> <p>4 read. Can you tell me why?</p> <p>5 A. Because I signed that guarantee</p> <p>6 predicated on the belief that Rocco was</p> <p>7 entirely responsible for this and I would</p> <p>8 never be liable for any of this.</p> <p>9 Q. So your point is that you</p> <p>10 believe that Rocco did not tell you the</p> <p>11 truth?</p> <p>12 A. Yes.</p> <p>13 Q. I'd like to go to paragraph</p> <p>14 37.6. You are free to read the entire</p> <p>15 paragraph and take as much time that you</p> <p>16 want, but I would like to read for the</p> <p>17 record the first sentence.</p> <p>18 A. Paragraph -- I'm sorry. Which</p> <p>19 one, John?</p> <p>20 Q. Paragraph 37.6 on page 27 of the</p> <p>21 lease. It's on Rigos 28.</p> <p>22 Do you see it?</p> <p>23 A. Yep. I see it.</p> <p>24 Q. I'm going to read for the record</p> <p>25 the first sentence.</p>	<p style="text-align: right;">Page 28</p> <p>1 J. Z. Rigos</p> <p>2 he has today, I don't know, but my</p> <p>3 understanding with him was crystal clear</p> <p>4 that I would never have to deal with any of</p> <p>5 this.</p> <p>6 And I was simply making an</p> <p>7 accommodation for him to secure this lease</p> <p>8 so he would not have to disclose his</p> <p>9 financials to the landlord. I have zero --</p> <p>10 can I expound, John, or no?</p> <p>11 Q. I'm sorry?</p> <p>12 A. Do you mind if I expound?</p> <p>13 Q. Of course, feel free.</p> <p>14 A. I would like to be clear, if</p> <p>15 it's not clear. I have zero economic</p> <p>16 interest in anything Rocco does. I am not</p> <p>17 a friend of Rocco's. I never had an</p> <p>18 interest. I never was a business partner.</p> <p>19 It was literally just a stupid thing I did.</p> <p>20 And now I'm dealing with it.</p> <p>21 So I have zero interest in any</p> <p>22 of this. I don't know the guy. I have</p> <p>23 never been in his home. I have never done</p> <p>24 anything with him, other than met him a</p> <p>25 handful of times and was fooled to do</p>
<p style="text-align: right;">Page 27</p> <p>1 J. Z. Rigos</p> <p>2 37.6. Guarantor assumes the</p> <p>3 responsibility for being and keeping itself</p> <p>4 informed of the financial condition of the</p> <p>5 tenant and of all other circumstances</p> <p>6 bearing upon the risk of non-payment or</p> <p>7 non-performance by the tenant of the</p> <p>8 guaranteed obligations which diligent</p> <p>9 inquiry would reveal and represents that it</p> <p>10 has adequate means of obtaining such</p> <p>11 financial information from the tenant on a</p> <p>12 continuing basis.</p> <p>13 So my question to you is, do you</p> <p>14 believe that you have complied with the</p> <p>15 provision of paragraph 37.6 that I just</p> <p>16 read?</p> <p>17 A. Again, I relied on Rocco to be</p> <p>18 telling me the truth. So I was fooled and</p> <p>19 lied to. And I'm the victim. Then no. I</p> <p>20 have not done that. I was fooled, like a</p> <p>21 lot of people are.</p> <p>22 Q. So that you think Mr. DiSpirito</p> <p>23 fooled you on this?</p> <p>24 A. Again, I can't tell you he</p> <p>25 didn't have more financial wherewithal than</p>	<p style="text-align: right;">Page 29</p> <p>1 J. Z. Rigos</p> <p>2 something so stupid.</p> <p>3 Q. Thank you for that explanation.</p> <p>4 I understand the predicament you find</p> <p>5 yourself in. I'm not trying to torture you</p> <p>6 over it, but I have to ask you these</p> <p>7 questions.</p> <p>8 A. Please.</p> <p>9 Q. I kind of want to break down</p> <p>10 paragraph 37.6.</p> <p>11 Did you keep yourself informed</p> <p>12 of the financial condition of the tenant?</p> <p>13 A. No.</p> <p>14 Q. Do you know what his financial</p> <p>15 condition is now?</p> <p>16 A. No.</p> <p>17 Q. When you signed the lease, you</p> <p>18 testified that Mr. Rocco told you he was a</p> <p>19 celebrity and he couldn't disclose his</p> <p>20 finances.</p> <p>21 But was there any other inquiry</p> <p>22 you made or did regarding the finances of</p> <p>23 the tenant?</p> <p>24 A. Just conversation. I asked for</p> <p>25 assurances that he had the financial</p>

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<p style="text-align: right;">Page 30</p> <p>1 J. Z. Rigos</p> <p>2 wherewithal that should the business not be</p> <p>3 successful that he would be able to take</p> <p>4 care of any obligations and I would never</p> <p>5 be a party to any of this.</p> <p>6 Q. You didn't obtain any financial</p> <p>7 statements or financial background from him</p> <p>8 at the time?</p> <p>9 A. No.</p> <p>10 Q. Or subsequently?</p> <p>11 A. No.</p> <p>12 Q. After you signed the lease as</p> <p>13 guarantor, between that time and the time</p> <p>14 that this lawsuit started, did you have any</p> <p>15 involvement with Mr. DiSpirito?</p> <p>16 A. Zero.</p> <p>17 Q. So no involvement with him or</p> <p>18 the business he was operating at the</p> <p>19 premises?</p> <p>20 A. No.</p> <p>21 MR. BRADHAM: Now I would like</p> <p>22 to mark as Exhibit 2 your declaration.</p> <p>23 That's dated November 17, 2021.</p> <p>24 (Whereupon, the declaration was</p> <p>25 hereby marked as Plaintiff's Exhibit 2</p>	<p style="text-align: right;">Page 32</p> <p>1 J. Z. Rigos</p> <p>2 and circumstances set forth below based on</p> <p>3 my personal knowledge and review of my</p> <p>4 books and records. I submit this</p> <p>5 declaration in support of my motion to</p> <p>6 dismiss the amended complaint of plaintiff</p> <p>7 Steven A. Cuculich, as trustee of Inter</p> <p>8 Vivos TRII FBO the Cuculich family</p> <p>9 landlord.</p> <p>10 You refer to reviewing books and</p> <p>11 records. What books and records did you</p> <p>12 review?</p> <p>13 A. I'm not sure what a book is in</p> <p>14 this context. My records are my E-mails</p> <p>15 and any files I may have in connection with</p> <p>16 any of this.</p> <p>17 Q. What E-mails and files do you</p> <p>18 have in connection with this?</p> <p>19 A. Whatever has been provided.</p> <p>20 Again, there's very little in terms of</p> <p>21 communications, E-mails, texts, because the</p> <p>22 situation is as simple as I'm conveying,</p> <p>23 which is, I was fooled into signing a</p> <p>24 document I never should have signed and I</p> <p>25 have nothing to do with and I regret.</p>
<p style="text-align: right;">Page 31</p> <p>1 J. Z. Rigos</p> <p>2 for identification, as of this date, by</p> <p>3 the reporter.)</p> <p>4 Q. Do you have a copy of that?</p> <p>5 A. Yes.</p> <p>6 Q. You are familiar with this</p> <p>7 document?</p> <p>8 A. Yes.</p> <p>9 Q. When was the last time you</p> <p>10 reviewed it?</p> <p>11 A. The declaration of John Rigos?</p> <p>12 Q. Yes.</p> <p>13 A. I read it this morning.</p> <p>14 Q. Just to be clear for the record.</p> <p>15 We are talking about your November 17, 2021</p> <p>16 declaration that was filed in this case,</p> <p>17 and we're marking it as Exhibit 2.</p> <p>18 A. Yes.</p> <p>19 Q. Going to the second page, is</p> <p>20 this your signature?</p> <p>21 A. Yes.</p> <p>22 Q. I want to go to the first</p> <p>23 paragraph. I will read it.</p> <p>24 It says, I am the defendant in</p> <p>25 this action. I have knowledge of the facts</p>	<p style="text-align: right;">Page 33</p> <p>1 J. Z. Rigos</p> <p>2 There's nothing -- other than that, that's</p> <p>3 the reality of the situation.</p> <p>4 MR. BRADHAM: The screen has</p> <p>5 just gone away.</p> <p>6 MR. MORICI: Off the record.</p> <p>7 (Whereupon, a discussion was</p> <p>8 held off the record.)</p> <p>9 Q. I'd like to now go to paragraph</p> <p>10 three. Let me just ask you to read the</p> <p>11 first sentence, Mr. Rigos.</p> <p>12 A. Sure. Paragraph three.</p> <p>13 Flavorworks operates a drinking and eating</p> <p>14 establishment at the premises. In or about</p> <p>15 March 2020 Flavorworks ceased its</p> <p>16 on-premises food and beverage service to</p> <p>17 comply with the emergency executive orders</p> <p>18 issued by former Governor Andrew Cuomo.</p> <p>19 Q. Based on what you've previously</p> <p>20 testified, my understanding is what</p> <p>21 Mr. Rocco was doing was he was making -- he</p> <p>22 was preparing certain fitness foods here</p> <p>23 and then delivering it to customers</p> <p>24 off-site, correct?</p> <p>25 A. Correct. Weight loss. Sorry.</p>

<p style="text-align: right;">Page 34</p> <p>1 J. Z. Rigos</p> <p>2 Not that it makes a big difference, but it</p> <p>3 was weight loss, not fitness necessarily.</p> <p>4 Q. Weight loss products.</p> <p>5 So he was not actually serving</p> <p>6 those customers on the premises?</p> <p>7 A. I don't know definitively. I</p> <p>8 don't believe so. Because I believe this</p> <p>9 is a commercial kitchen.</p> <p>10 Q. What do you mean by "commercial</p> <p>11 kitchen"?</p> <p>12 A. Commercial kitchen does not</p> <p>13 typically have customers come in and sit</p> <p>14 and be served food. A commercial kitchen</p> <p>15 is simply a functional space with equipment</p> <p>16 to produce products.</p> <p>17 Q. So --</p> <p>18 A. I don't know that that's what</p> <p>19 the space is. I'm assuming that's what it</p> <p>20 is, because I haven't seen it.</p> <p>21 Q. So your understanding is, it was</p> <p>22 not a restaurant?</p> <p>23 A. Correct. I believe it was not a</p> <p>24 restaurant.</p> <p>25 Q. I think you testified that you</p>	<p style="text-align: right;">Page 36</p> <p>1 J. Z. Rigos</p> <p>2 testifying that there was a restaurant ever</p> <p>3 operating there?</p> <p>4 A. I don't know if there was or</p> <p>5 wasn't. I believe he prepared food and</p> <p>6 drinks for his customers for consumption</p> <p>7 off-site.</p> <p>8 Q. Do you have any knowledge of any</p> <p>9 Government permits that the tenant has to</p> <p>10 operate its facility there?</p> <p>11 A. I don't know specifically what a</p> <p>12 commercial kitchen requires, no.</p> <p>13 Q. You say in here in paragraph</p> <p>14 three that Flavorworks ceased its</p> <p>15 on-premises food and beverage service to</p> <p>16 comply with the emergency executive orders</p> <p>17 issued by Governor Andrew Cuomo.</p> <p>18 What executive orders are you</p> <p>19 referring to?</p> <p>20 A. When the pandemic appeared or</p> <p>21 hit in the middle of March, every food and</p> <p>22 beverage company, restaurant, shut down.</p> <p>23 Q. But do you believe that -- are</p> <p>24 you saying that you believe that a</p> <p>25 commercial kitchen was required to cease</p>
<p style="text-align: right;">Page 35</p> <p>1 J. Z. Rigos</p> <p>2 had never visited the space.</p> <p>3 A. Correct.</p> <p>4 Q. When you testified that it was</p> <p>5 not a restaurant, what's your basis for</p> <p>6 that?</p> <p>7 A. Combination of believing that I</p> <p>8 was told it was a commercial kitchen, which</p> <p>9 again is not a restaurant. And even during</p> <p>10 my conversations with Steven Cuculich,</p> <p>11 which I had multiple conversations with</p> <p>12 Steven, I believe he conveyed that this was</p> <p>13 a fully-equipped commercial kitchen.</p> <p>14 That's it.</p> <p>15 Q. You have no reason to believe</p> <p>16 that Mr. Rocco ever operated a restaurant</p> <p>17 there?</p> <p>18 A. I have no basis to know if he</p> <p>19 did or didn't, other than what I've</p> <p>20 expressed.</p> <p>21 Q. But when you say -- in paragraph</p> <p>22 three you talk about a drinking and eating</p> <p>23 establishment at the premises, an</p> <p>24 on-premises food and beverage service.</p> <p>25 Let's be clear. You are not</p>	<p style="text-align: right;">Page 37</p> <p>1 J. Z. Rigos</p> <p>2 operations?</p> <p>3 A. I'm assuming as much. Yes. I</p> <p>4 don't know definitively.</p> <p>5 Q. You are saying you are assuming</p> <p>6 those executive orders covered commercial</p> <p>7 kitchens.</p> <p>8 A. I'm assuming. Yes.</p> <p>9 Q. And that's why you said what you</p> <p>10 said in paragraph three?</p> <p>11 A. Correct. We shut down every one</p> <p>12 of our restaurants when COVID appeared.</p> <p>13 Q. Your restaurants. But does your</p> <p>14 company operate any commercial kitchens?</p> <p>15 A. No.</p> <p>16 Q. And what is your basis for</p> <p>17 saying that I believe those executive</p> <p>18 orders encompassed commercial kitchens?</p> <p>19 A. Because everybody I know in the</p> <p>20 restaurant world shut down operations. I'm</p> <p>21 assuming that would also apply to</p> <p>22 Flavorworks.</p> <p>23 Q. For a commercial kitchen?</p> <p>24 A. Yes.</p> <p>25 Q. But that's your assumption. You</p>

10 (Pages 34 - 37)


<p style="text-align: right;">Page 38</p> <p>1 J. Z. Rigos</p> <p>2 don't have any basis to actually know that?</p> <p>3 A. He acquired Le Pain Quotidien,</p> <p>4 which operates a commercial kitchen, a</p> <p>5 production facility. It's not a commercial</p> <p>6 kitchen. It's a -- production facility is</p> <p>7 the nomenclature we use, after all of this</p> <p>8 happened. And my understanding is they</p> <p>9 shut down their production facility, just</p> <p>10 like every other food establishment I know</p> <p>11 shut down their facilities. So I'm</p> <p>12 assuming that Rocco shut down his facility</p> <p>13 as well.</p> <p>14 Q. Do you know that he shut down</p> <p>15 his facility?</p> <p>16 A. I do not know.</p> <p>17 Q. But you say in paragraph three</p> <p>18 that Flavorworks ceased its on-premises</p> <p>19 food and beverage service.</p> <p>20 So if you don't know, why did</p> <p>21 you say that?</p> <p>22 A. Because 99.9 percent of people</p> <p>23 that are in this business that I know shut</p> <p>24 down their facilities. So I'm assuming,</p> <p>25 unless he is the one in a thousand, he did</p>	<p style="text-align: right;">Page 40</p> <p>1 J. Z. Rigos</p> <p>2 A. Correct.</p> <p>3 Q. But when a commercial kitchen is</p> <p>4 supplying individuals, that's a different</p> <p>5 situation, isn't it?</p> <p>6 A. It is. I would assume they</p> <p>7 would shut down as well.</p> <p>8 Q. Did you ever discuss this with</p> <p>9 Rocco or anyone as to whether they shut</p> <p>10 down the business?</p> <p>11 A. I don't recall a specific</p> <p>12 conversation, but I believe at some point</p> <p>13 when we spoke he said they stopped</p> <p>14 operating.</p> <p>15 Q. You believe he said that at some</p> <p>16 point when you spoke to him?</p> <p>17 A. Yes. I can't tell you</p> <p>18 definitively. I don't remember the</p> <p>19 specific conversation. But I know that --</p> <p>20 I lived in Manhattan. Everything shut</p> <p>21 down. That's all I know.</p> <p>22 Q. Again, your basis for this</p> <p>23 paragraph three is your general</p> <p>24 understanding of what was happening in</p> <p>25 Manhattan, but you have no specific</p>
<p style="text-align: right;">Page 39</p> <p>1 J. Z. Rigos</p> <p>2 too.</p> <p>3 Q. But do you know of any</p> <p>4 commercial kitchens that actually shut down</p> <p>5 their business during the pandemic?</p> <p>6 A. I didn't proactively go out</p> <p>7 there and ask people if they shut down</p> <p>8 their kitchens. But there are many other</p> <p>9 brands in New York City that I know that</p> <p>10 operate a commercial kitchen, although, I</p> <p>11 have no interest in their business. I know</p> <p>12 when they shut down their restaurants,</p> <p>13 which are supported by their commissaries</p> <p>14 or commercial kitchens, they shut that down</p> <p>15 as well.</p> <p>16 Q. But you are referring to</p> <p>17 commercial kitchens that were supplying</p> <p>18 restaurants, as opposed to commercial</p> <p>19 kitchens who were supplying individual</p> <p>20 customers, right?</p> <p>21 A. Correct.</p> <p>22 Q. So if a restaurant had to shut</p> <p>23 down, presumably you would shut down the</p> <p>24 commercial kitchen too because there's</p> <p>25 nothing to supply?</p>	<p style="text-align: right;">Page 41</p> <p>1 J. Z. Rigos</p> <p>2 knowledge here of what happened at this</p> <p>3 facility?</p> <p>4 A. Correct.</p> <p>5 Q. Then if we can go to paragraph</p> <p>6 four. You say, although landlord's amended</p> <p>7 complaint is unclear as to the time period</p> <p>8 of the unpaid rent that it is seeking to</p> <p>9 recover from me, it appears that landlord</p> <p>10 is seeking damages based on an alleged</p> <p>11 default by Flavorworks that includes</p> <p>12 arrears that accrued from and after March</p> <p>13 2020.</p> <p>14 Can you tell me your basis for</p> <p>15 that statement?</p> <p>16 A. I was sued to pay for rent</p> <p>17 that's due. So I'm assuming that that's</p> <p>18 what this is all about.</p> <p>19 Q. But do you know when the actual</p> <p>20 default -- do you know when the actual</p> <p>21 default of the tenant occurred?</p> <p>22 A. I do not.</p> <p>23 Q. Do you actually know what rent</p> <p>24 the landlord is seeking, for what period of</p> <p>25 time?</p>

<p style="text-align: right;">Page 42</p> <p>1 J. Z. Rigos</p> <p>2 A. I do not, other than what the</p> <p>3 letter said that you sent me, which said</p> <p>4 you were looking for \$150,000.</p> <p>5 Q. So that's your only knowledge on</p> <p>6 this?</p> <p>7 A. Yes.</p> <p>8 Q. You just mentioned a minute ago</p> <p>9 various conversations you had with Steve</p> <p>10 Cuculich.</p> <p>11 Can you tell me what</p> <p>12 conversations you had with him, when and</p> <p>13 what you recall?</p> <p>14 A. Yes. I don't recall the first</p> <p>15 time he called me, but I would say we</p> <p>16 probably had five conversations over the</p> <p>17 last few years.</p> <p>18 I want to be clear. I was</p> <p>19 always incredibly accommodating and</p> <p>20 friendly and constructive in trying to help</p> <p>21 him deal with the situation.</p> <p>22 Notwithstanding that, I did sign the</p> <p>23 guarantee, and I acknowledge that, I have</p> <p>24 nothing to do with it.</p> <p>25 I have a life, a family, a</p>	<p style="text-align: right;">Page 44</p> <p>1 J. Z. Rigos</p> <p>2 tenor of the conversations I have had with</p> <p>3 Steve. Cordial with Steve, annoyed with</p> <p>4 Rocco, and desperately trying to remove</p> <p>5 myself from that entire thing, like I am</p> <p>6 right now.</p> <p>7 Q. Do you remember anything else</p> <p>8 that Mr. Cuculich told you, other than what</p> <p>9 you just testified to?</p> <p>10 A. No. I don't know. I mean, I</p> <p>11 can't think of anything. If there's</p> <p>12 something specific you can ask me, I'll</p> <p>13 tell you if I remember it. But I don't</p> <p>14 remember -- that was the nature of our</p> <p>15 conversations. Help me solve this problem</p> <p>16 with Rocco. And I tried every time.</p> <p>17 Q. So after you spoke to</p> <p>18 Mr. Cuculich about this, did you speak to</p> <p>19 Mr. DiSpirito?</p> <p>20 A. Yes.</p> <p>21 Q. What did you tell him?</p> <p>22 A. I would say, the landlord has</p> <p>23 called me. He's very upset with you. You</p> <p>24 haven't paid rent. You made a promise you</p> <p>25 haven't kept. What's going on?</p>
<p style="text-align: right;">Page 43</p> <p>1 J. Z. Rigos</p> <p>2 business that consumes me. And I have</p> <p>3 nothing to do with Rocco DiSpirito, other</p> <p>4 than a stupid move that I made eight years</p> <p>5 ago.</p> <p>6 On each one of those</p> <p>7 conversations with Steve, I said, Steve, I</p> <p>8 have nothing to do with this. I explained</p> <p>9 to him the reality of what happened. I</p> <p>10 said, I will do whatever I can. I will</p> <p>11 call Rocco and tell him to work with you</p> <p>12 and make sure he starts paying.</p> <p>13 I would call Rocco and say, what</p> <p>14 the hell is going on? Pay the guy. Pay</p> <p>15 the guy. Pay the guy. I have no idea what</p> <p>16 was paid or not paid. I never got into the</p> <p>17 numbers.</p> <p>18 Then at one point Steve said, do</p> <p>19 me a favor, just have him get out of the</p> <p>20 space. I said, okay. I don't speak to the</p> <p>21 guy, but I will call him.</p> <p>22 Rocco, Steve wants you to just</p> <p>23 get out of the space. Just give it to him.</p> <p>24 Why am I even involved here?</p> <p>25 That was the sentiment and the</p>	<p style="text-align: right;">Page 45</p> <p>1 J. Z. Rigos</p> <p>2 I never got involved in the</p> <p>3 details, the particulars, the dollars.</p> <p>4 None of that was I aware of.</p> <p>5 Are you resolving this? Yes,</p> <p>6 John, I am resolving this. Don't worry.</p> <p>7 Okay. Please take care of it.</p> <p>8 I probably had several of those</p> <p>9 kinds of calls first with the landlord and</p> <p>10 then with Rocco. And that's all -- I never</p> <p>11 wanted to think about this. So I would</p> <p>12 immediately end any thought of the</p> <p>13 situation after those two calls.</p> <p>14 Q. When was the last time you spoke</p> <p>15 to Mr. DiSpirito? Do you recall?</p> <p>16 A. I don't know specifically, but I</p> <p>17 probably spoke to him a month ago or so.</p> <p>18 I'm not sure what prompted it, but</p> <p>19 something would have prompted it. Meaning</p> <p>20 something with this would have prompted me</p> <p>21 to say, what's going on? Is this done?</p> <p>22 Q. Do you recall anything else</p> <p>23 about the conversation?</p> <p>24 A. No.</p> <p>25 Q. Did Mr. DiSpirito give you an</p>

<p style="text-align: right;">Page 46</p> <p>1 J. Z. Rigos</p> <p>2 indemnity for serving as guarantor under</p> <p>3 the lease?</p> <p>4 A. Yes.</p> <p>5 Q. Was there actually a document</p> <p>6 that was finalized and signed by both you</p> <p>7 and Mr. DiSpirito?</p> <p>8 A. I assume there was, but I have</p> <p>9 not been able to find a signed document.</p> <p>10 Q. You have not been able to find</p> <p>11 it?</p> <p>12 A. Correct. I don't think --</p> <p>13 sorry, John. I don't think anybody would</p> <p>14 dispute that there's the existence of that</p> <p>15 obligation between Rocco and me. Meaning</p> <p>16 even if I don't have a signed copy, I</p> <p>17 believe Rocco will acknowledge there's</p> <p>18 supposed to be a signed copy to indemnify</p> <p>19 me against this. Yes.</p> <p>20 Q. What I would like you to go to,</p> <p>21 I think you have it on your screen, the</p> <p>22 documents that are produced with Bates</p> <p>23 stamps. If you go to Rigos 204 through</p> <p>24 Rigos -- just go to Rigos 204.</p> <p>25 A. Yep.</p>	<p style="text-align: right;">Page 48</p> <p>1 J. Z. Rigos</p> <p>2 Q. After this action was filed, did</p> <p>3 you tell Mr. DiSpirito that he has to</p> <p>4 indemnify you and assume your defense?</p> <p>5 A. I'm sure I did when this all</p> <p>6 arose. Yes.</p> <p>7 Q. Do you recall his response to</p> <p>8 that?</p> <p>9 A. I don't recall the actual</p> <p>10 response, but I'm going to assume --</p> <p>11 because if it were anything other than the</p> <p>12 obvious response I would recall, i.e., if</p> <p>13 he contested or challenged, I am sure he</p> <p>14 said yes, there is an indemnification.</p> <p>15 Don't worry. Thank you.</p> <p>16 Q. Has he paid any of your</p> <p>17 attorney's fees in this action?</p> <p>18 A. No.</p> <p>19 Q. Have you asked him to pay</p> <p>20 specific attorney fees?</p> <p>21 A. I have not gotten an invoice as</p> <p>22 of this point, but I intend on making sure</p> <p>23 that those invoices are covered. Yes.</p> <p>24 Q. So you have not received an</p> <p>25 invoice. But when you do, you intend to</p>
<p style="text-align: right;">Page 47</p> <p>1 J. Z. Rigos</p> <p>2 MR. BRADHAM: What I am going to</p> <p>3 make as an exhibit will be Rigos 204</p> <p>4 through Rigos 211. We'll make that</p> <p>5 Exhibit 3. It's a collection of</p> <p>6 E-mails. At the end there is a draft</p> <p>7 document that appears to be a draft</p> <p>8 indemnity agreement.</p> <p>9 (Whereupon, the E-mails and</p> <p>10 draft document was hereby marked as</p> <p>11 Plaintiff's Exhibit 3 for</p> <p>12 identification, as of this date, by the</p> <p>13 reporter.)</p> <p>14 Q. I would like to ask you now,</p> <p>15 looking at Exhibit 3, which again is Rigos</p> <p>16 204 through Rigos 211, if you go to Rigos</p> <p>17 210 and 211 --</p> <p>18 A. 210. Yep.</p> <p>19 Q. You said you believe you have an</p> <p>20 indemnity agreement.</p> <p>21 Is this a draft of that</p> <p>22 indemnity agreement you have with</p> <p>23 Mr. DiSpirito?</p> <p>24 A. I assume this is a draft of that</p> <p>25 agreement. Yes.</p>	<p style="text-align: right;">Page 49</p> <p>1 J. Z. Rigos</p> <p>2 send that to Mr. DiSpirito and ask him to</p> <p>3 pay it?</p> <p>4 A. Correct.</p> <p>5 Q. If we can go back to Rigos 204.</p> <p>6 A. Yes.</p> <p>7 Q. This is a November 13, 2014</p> <p>8 E-mail from you to Mr. DiSpirito and W.</p> <p>9 Randolph. You say there, Rocco/William,</p> <p>10 the guarantee and indemnification look</p> <p>11 good. Please send me the versions for</p> <p>12 which you would like my signatures, and I</p> <p>13 will turn them right around.</p> <p>14 Do you believe that you were</p> <p>15 referring to the indemnification of you by</p> <p>16 Mr. DiSpirito?</p> <p>17 A. Yes.</p> <p>18 Q. If I understand your testimony,</p> <p>19 you believe you signed and executed such a</p> <p>20 document, but you can't find a copy of it?</p> <p>21 A. Yes.</p> <p>22 Q. Have you asked Mr. DiSpirito for</p> <p>23 it?</p> <p>24 A. I have not asked him of late for</p> <p>25 that. No.</p>

<p style="text-align: right;">Page 50</p> <p>1 J. Z. Rigos</p> <p>2 Q. Did you ever ask him for it?</p> <p>3 A. I may have asked then for his</p> <p>4 signed copy. I'm assuming somehow it was</p> <p>5 conveyed. But no, I don't recall</p> <p>6 specifically asking for it.</p> <p>7 MR. BRADHAM: I don't think I</p> <p>8 have really anything else. Let me take</p> <p>9 a minute or two and look over my notes</p> <p>10 to see if I have anything else at this</p> <p>11 point.</p> <p>12 Off the record.</p> <p>13 (Whereupon, a discussion was</p> <p>14 held off the record.)</p> <p>15 (Whereupon, a short recess was</p> <p>16 taken.)</p> <p>17 MR. BRADHAM: I don't have any</p> <p>18 further questions.</p> <p>19 Do you have any questions?</p> <p>20 [Continued on the following page</p> <p>21 to allow for signature line and jurat.]</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 52</p> <p>1</p> <p>2 A C K N O W L E D G M E N T</p> <p>3</p> <p>4 STATE OF NEW YORK)</p> <p>5 :ss</p> <p>6 COUNTY OF)</p> <p>7</p> <p>8 I, John Z. Rigos, hereby certify that</p> <p>9 I have read the transcript of my testimony</p> <p>10 taken under oath in my deposition of</p> <p>11 July 13, 2022; that the transcript is a</p> <p>12 true and complete record of my testimony,</p> <p>13 and that the answers on the record as given</p> <p>14 by me are true and correct.</p> <p>15</p> <p>16</p> <p>17 _____</p> <p>18 JOHN Z. RIGOS</p> <p>19</p> <p>20 Signed and subscribed to before me this</p> <p>21 _____ day of _____, 2022.</p> <p>22</p> <p>23 _____</p> <p>24 Notary Public, State of New York</p> <p>25</p>
<p style="text-align: right;">Page 51</p> <p>1 J. Z. Rigos</p> <p>2</p> <p>3 MR. MORICI: I have no</p> <p>4 questions.</p> <p>5 MR. BRADHAM: We can go off the</p> <p>6 record.</p> <p>7 (Whereupon, a discussion was</p> <p>8 held off the record.)</p> <p>9 (Whereupon, at 12:03 p.m., the</p> <p>10 Examination of this witness was</p> <p>11 concluded.)</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 53</p> <p>1</p> <p>2 LITIGATION SUPPORT INDEX</p> <p>3 WITNESS EXAMINATION BY PAGE</p> <p>4 J. Z. Rigos Mr. Bradham 4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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1				1	
2	EXHIBITS			2	C E R T I F I C A T E
3	PLAINTIFF'S			3	
4	EXHIBIT	DESCRIPTION	PAGE	4	I, Maryann Laub, a Notary Public in
5	EXH 1	Lease	18	5	and for the State of New York, do hereby
6	EXH 2	Declaration	30	6	certify:
7	EXH 3	E-mails and draft		7	THAT the witness(es) whose testimony
8		document	47	8	is hereinbefore set forth, was duly sworn
9				9	by me; and
10				10	THAT the within transcript is a true
11				11	record of the testimony given by said
12				12	witness(es).
13				13	I further certify that I am not
14				14	related, either by blood or marriage, to
15				15	any of the parties in this action; and
16				16	THAT I am in no way interested in the
17				17	outcome of this matter.
18				18	IN WITNESS WHEREOF, I have hereunto
19				19	set my hand this 27th day of July, 2022.
20				20	
21				21	
22				22	
23				23	MARYANN LAUB
24				24	
25				25	

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1			
2	ERRATA SHEET		
3	VERITEXT/NEW YORK REPORTING, LLC		
4	1-800-727-6396		
5	330 OLD COUNTRY ROAD 1250 BROADWAY		
6	MINEOLA, NEW YORK 11501 NEW YORK, NEW YORK 10001		
7			
8	NAME OF CASE: Cuculich v. Rigos		
9	DATE OF DEPOSITION: July 13, 2022		
10	NAME OF DEPONENT: John Z. Rigos		
11			
12	PAGE	LINE (S)	CHANGE REASON
13			
14			
15			
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17			
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19			
20			
21			
22	JOHN Z. RIGOS		
23	SUBSCRIBED AND SWORN TO BEFORE ME		
24	THIS	DAY OF	, 20 .
25			

[& - asking]

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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